CARMEN POWELL, IN PRO PER
372 BAY LEAF DR.
CHULA VISTA, CALIF. 91910
619 420-4204 OR 619 253-1806

FILED
08 MAR 28 PM 1:52
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY: DEPUTY

NUNC PRO TUNC
MAR 28 2008

UNITED STATE DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

Carmen Powell, Plaintiff/Petitioner/Movant Vs. Defendants/Respondent City of Chula Vista; Chula Vista Police Department, Det Ruth Hinzman; Agt. Angerson; Agt Oyos; Sgt Cervantes; and Person and Entities Unknown, City of San Diego and San Diego County Protective Services Workers, Julie Smith, Nadia Najors, Megan Petfinger; Rebecca Slade and Persons and Entities unknown, Children's Hospital; Diana Chase, Nurse, Debra Davies, LCSW and Entities unknown	Case No. 07 CV 1836 **Opposition to Motion to Dismiss**

Now comes Carmen Powell before the Honorable Court, and would like to first apologize for my untimely filing of my Opposition to Dismiss, at no time is my lack of filing an admission or should be construed as my consent to granting the Motion to Dismiss. My lack of filing was an oversight and I beg the courts forgiveness.

The Defendants Motion to Dismiss is based on the following, I. COMPLAINT SHOULD BE DISMISSED PURSUANT TO RULE 12 (B)(6) BECAUSE IT IS SUBJECT TO A CLAIM PRECLUSION DEFENSE, II. THE COMPLAINT SHOULD BE DISMISSED BECAUSE DEFANDANT SMITH IS ABSOLUTELY IMMUNE TO LIABILITY ON THE ALLEGED FEDERAL CLAIMS, III. THE COMPLAINT SHOULD BE DISMISSED FOR LACK OF JURISDICTION TO REVIEW STATE COURT ORDERS AND JUDGEMENTS CONCERNING JUVENILE DEPENDENCY AND CUSTODY MATTERS.

RECEIVED
MAR 28 2008
CLERK U.S. DISTRICT COURT

37

Answer to I, I am in the process of filing an amended complaint to express an exact state of claim, II. THE COMPLAINT SHOULD BE DISMISSED BECAUSE DEFENDANT SMITH IS ABSOLUTELY IMMUNE TO LIABILITY ON THE ALLEGED FEDERAL CLAIMS. Your Honor, the law is clear that social workers are not immune from 1. Perjury, 2. Fabrication of evidence, 3. Failure to disclose known exculpatory evidence, 4. Obtaining testimony by duress. In my amended complaint I will lay out in detail how not only Julie Smith, and not limited to other named social workers and those unknown in this case did the same.

Answer to III, THE COMPLAINT SHOULD BE DISMISSED FOR LACK OF JURISDICTION TO REVIEW STATE COURT ORDERS AND JUDGEMENTS CONCERNING JUVENILE DEPENDENCY AND CUSTODY MATTERS. It is clear that defendants feels that this court can review whatever the defendant deems relevant, and Your Honor, the defendant wants to present to you a snap shot of Juvenile Court records, however they want to withhold the video tapes interview of my dependant child, whom they seized without a warrant, immanent harm or exigent circumstance and where statements submitted under penalty of perjury by Julie Smith and other social workers was an intentional fabrication, and what Julie Smith directly told the court under penalty of perjury, was a total fabrication with malice. I request that if the court is going to entertain this snap shot of court records, please in the matter of equal access under the law, that this court request of the defendant that all court documents, transcripts, testimony and video tapes be turned over to this court for review in order to get to the entire truth of the matter. I beg that this court does not allow the wool to be pulled over this courts eyes in order to deny me equal access under the law. In juvenile court discovery is turned over or withheld and as of this late date, I have still not received all discovery in this juvenile matter and you a limited as to what you can receive, exculpatory information is withheld, the defendants in this matter are allowed to sit in on each others testimony during court proceedings and much is withheld or hidden

I am informing this court that I will be filing and amended petition, not only based on new, exculpatory information, but factual information not only is this the correct court to hear this matter, that I also have a legal and factual basis for this matter as according to Federal and State statues.

Respectfully Submitted

Carmen Powell, In Pro Per

Dated: March 24, 2008

By: ______________________________
Carmen Powell, In Pro Per

Attorneys for Defendants

John J. Sansone, County Counsel (SB#13060)
County of San Diego
By Ricky R. Sanchez, SD (SB#107559)
1600 Pacific Highway, Room 355
San Diego, Calif. 92101-2469
619 531-4874

Shelia S. Trexler, SB#123871
Neil, Dymott, Frank, McFall & Trexler
1010 Second Avenue, Suite 2500
San Diego, CA 92101-4959
619 238-1712
Attorney for Morteza Mirkarimi, M.D.

Marilyn R. Moriarty (SB#89818)
Rita R. Kanno (SB#230679)
Lewis Brisbois Bisgaard & Smith
550 West "C" Street, Suite 800
San Diego, Calif. 92101
619 233-1006
Attorney for Rady Children's Hospital and Diana Chase

CERTIFICATE OF SERVICE

A COPY OF THE FOREGOING HAS BEEN SENT VIA REGULAR, U.S. MAIL, POSTAGE PREPAID TO:

John J. Sansone, County Council
Ricky R. Sanchez, Sr. Deputy
1600 Pacific Highway, Rm 355
San Diego, Calif. 92101
Attorneys for Julie Smith

Lewis Brisbois Bisgaard & Smith
550 West "C" Street, Suite 800
San Diego, Calif. 92101
Attorney's for Rady Children's Hospital and Diana Chase

Neil, Dymott, Frank, McFall & Trexler
1010 Second Avenue, Suite 2500
San Diego, Calif. 92101
Attorney for Morteza Mirkarimi, M.D.

I declare that by placing a copy in a separate envelope, with postage fully prepaid, for each addressee named above and depositing each in the U.S. Mail at San Diego, California, on this 25th day of March, 2008

Date: March 25, 2008

Carmen Powell